IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: J U D G M E N T :

S.B. Civil First Appeal No.30/1992.
Shree Shiv Shramik Theka Sahkari Samiti Ltd.
Vs.
State of Rajasthan & Others

DATE OF JUDGMENT : July 26th, 2007

P R E S E N T

Hon'ble Mr. Justice Gopal Krishan Vyas

Mr. Daulat Ram Prajapat/Mr. Dilip Moolchandani for the appellant.
Mr. O.P. Rathi, Dy. G.A.

BY THE COURT :

This regular first appeal is filed by the plaintiff challenging the judgment and decree dated 19.07.1991 passed by the District Judge, Pali in Civil Original Suit No.32/82 whereby the suit of the plaintiff for recovery of money was dismissed with cost on the ground of limitation.

The plaintiff disclosed in the suit that in pursuance of notice inviting tenders issued by defendant-respondent No.3 the plaintiff submitted its tender for “labour charges for laying cement and concrete”. The said tender was accepted by the defendant department and, under agreement, work contract was given to the plaintiff on 26.06.1975. According to the plaintiff-appellant, the above-mentioned work was completed as per contract agreement. Thereafter, the plaintiff requested the authorities concerned for making payment of the final bills but it was not done and the

authorities deducted an amount of Rs.400/- from the second running bill of the plaintiff for the use of machinery of the department though, as per the plaintiff, it did not use the machinery of the department nor there was any provision to this effect. It is submitted that as per the contract agreement it was clearly mentioned that if machinery is required by the contractor it would be supplied at the demand of the contractor and the plaintiff did not put any demand for use of the machinery of the department. When the plaintiff asked for final payment, the department deducted an amount of Rs.15,572/- and the said amount was deducted from the running bill of the plaintiff appellant and from security deposits of various other contract agreements as the securities deposited by the appellant in respect of the contract agreements of various contract works were lying with the department. Vide communication dated 30.03.1978, the defendants informed the appellant that after deducting the amount of Rs.15,572/- from the amounts of securities, the balance amount due to him is Rs.4,179/-. The communication dated 30.03.1978 is Ex.-33 on record.

The plaintiff contended in the plaint that the aforesaid deduction was made by the defendant department illegally and, therefore, it filed certain representations for finalization of the work order and dispute and vide notice dated 04.07.1979 under Section 80, C.P.C. the department authorities were requested to refund the amount. It is further submitted that no payment was made, however, vide communication dated 18.08.1980, Ex.-36 on record, the matter was referred by the Superintending Engineer, P.W.D. (B & R), Jodhpur to the Chief Engineer, P.W.D. (B & R), Jaipur for decision of the matter on merit. Thereafter, no communication was received by the plaintiff nor

the defendants made any payment to the plaintiff, therefore, the suit for recovery of Rs.12,615/- was filed and it was prayed that suit may be decreed in favour of the plaintiff alongwith interest.

Before the trial Court, written-statement was filed by the State and it was specifically replied that deductions were rightly made by the department because machines of the department were utilized by the plaintiff-contractor for the purpose of concrete mixture and laying the concrete and accordingly amount of Rs.15,972/- was adjusted from the amounts of securities deposited as well as running bills of the contractor. The department contended that there was no illegality in it. On the basis of the pleadings of the parties, the trial Court framed the following issues for adjudication :

> "(1)आया टैंडर व जी शेडयुल के अनुसार मिकिरंग एवं वाईब्रेटिंग का कार्य भी वादी के लिए था ? उसके लिए वादी ने कोई मशीनरी की मांग की क्या ?
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> (2)आया श्री अमरचंद वादी की ओर से दावा पेश करने व दावे के संबंधित तमाम कार्य करने हेतु वादी द्वारा अधिकृत है ?
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> (3)आया मशीनरी के किराये के लिए वादी के बिल से रकम रू.400/- काटी गई, तब वादी ने एतराज नहीं किया इसलिए किराया अदा करने वाली शर्त बाबत वादी की स्वीकारोक्ति है, जिससे वादी अब नहीं मुकर सकता ?
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> (4)आया वादी रू.10,779 जो उनके बिलत व सकियोरिटी डिपोजिट से काटे गए है, वह रकम मय ब्याज वापिस पाने का अधिकारी है ?
>
> (5)आया वादी का नोटिस कानून के अनुसार नहीं था ?
>
> (6)आया दावा वादी मयाद बाहर है ?
>
> (7)दादरसी ।"

At the trial, the plaintiff led oral evidence of P.W.-1 Amarchand, P.W.-2 Mohan Das and P.W.-3 Bala Ram and documents were exhibited in support of the suit. Defence examined D.W.-1 Harikrishna Calla,

Superintending Engineer, D.W.-2 Basti Ram, Asstt. Engineer and D.W.-3 Ram Lal Madhukar, Jr. Engineer. For the purpose of adjudication of the issues to decide the claim of the plaintiff on merit, burden to prove the issues was to be discharged by the defendants in respect of issues No.1, 3, 5 and 6. The burden to prove issues No.2 and 4 lay on the plaintiff. After examination and appreciation of the evidence coming on record the trial Court decided issues No.1, 2, 3, 4 and 5 against the defendants and in favour of the plaintiff.

However, on the question of limitation in respect of issue No.6, the trial Court accepted the plea of the defendants that last adjustment of accounts in the matter was made vide communication No.EEP/F/C/5/15720 dated 30.03.1978, Ex.-33 and, thereafter, there is no acknowledgment made by the department and thus the matter set at rest with the department for the purpose of reckoning limitation period for filing the suit in accordance with Article 113 of the Limitation Act. The trial Court accordingly held that suit filed on 18.10.1982 was barred by limitation because even after taking into consideration the notice period, suit must have been filed by May 1981 to be within limitation and decided issue No.6 in favour of the defendants against the plaintiff. As a result, suit of the plaintiff was dismissed being barred by limitation.

It may be observed here that in the present appeal the plaintiff-appellant has challenged the finding of the trial Court on issue No.6 whereas no appeal has been preferred by the State against the findings of the trial Court arrived at on issues No.1, 2, 3, 4 and 5.

It is vehemently contended by learned counsel for the appellant that the finding of the trial Court on the question of limitation is totally

erroneous and perverse. It is contended that on the one hand the trial Court reached conclusion that the department has wrongly adjusted the claimed amount of the plaintiff Co-operative Society; and, on the other hand, upon wrong assessment and interpretation, on the technical ground of limitation, dismissed the suit of the appellant.

It is argued on behalf of the appellant that the trial Court has wrongly presumed that since last adjustment was made by the department on 30.03.1978 and thereafter there is no acknowledgment by the department, in accordance with Article 113 of the Limitation Act, the suit ought to have been filed within three years of this date. Learned counsel for the appellant contended that thereafter the plaintiff represented his claim before the department and ultimately the claim of the plaintiff was referred to the Chief Engineer, P.W.D. (B & R), Jaipur vide Ex.-36 dated 12.08.1980 for decision of the case on merit. In view of Ex.-36 it is urged that from the said document it is self-explanatory that the matter was pending decision with the department until 12.08.1980 in any case and, therefore, the trial Court has proceeded on conjectures and surmises while arriving at the conclusion that there is no acknowledgment made by the department after 30.03.1978 when last adjustment was made by the department vide Ex.-33. It is contended by learned counsel for the appellant-plaintiff that thereafter notice for demand was sent to the department and in communication dated 12.08.1980 while observing that the matter is old one and may be decided on merit no payment was made to the plaintiff-appellant vide Ex.-36; meaning thereby, as per learned counsel for the appellant, it was continuous cause of action and no reply was given to the notice sent under

Section 80, C.P.C. It is vehemently contended that the trial Court has reached conclusion on issue No.6 with regard to limitation ignoring the documentary evidence on record, therefore, the finding of the trial Court on issue No.6 deserves to be quashed.

In support of his submission, learned counsel for the appellant placed reliance on the judgment of this Court in Man Singh Vs. Gamer Rebari & Another, reported in 2001 (2) RLR 401. In the lee of the said judgment, learned counsel for the appellant submits that State agencies and instrumentalities ought not to attempt thwarting genuine claims merely on the ground of limitation and, in such cases, once the Court has reached conclusion as to the genuineness of the claim it should not allow plea of limitation to be raised at the hands of the State instrumentalities. It is contended that in the cited judgment, the Division Bench of this Court set aside the judgments of the learned Single Judge as well as order passed by the Tribunal while observing as follows :

> "Before parting, we must also add that the plea of limitation was not open to the Insurance Company. We fail to understand that how the learned Tribunal has permitted the Insurance Company to raise this plea before it. It is unfortunate that the learned Tribunal has not only permitted the Insurance Company to raise such plea but also accepted it with complete ignorance of the latest law."

Learned counsel for the appellant also invited my attention to Madras the judgment of the Supreme Court in the case of Madras Port Trust Vs. Hymanshu International, reported in AIR 1979 SC 1144, wherein the apex Court made it clear that such plea of limitation should not be allowed by the Courts to be raised unless the claim is not well-founded and by reason of delay in filing it, the evidence for

the purpose of resisting such a claim has become unavailable.

Yet another judgment is cited by learned counsel for the appellant in support of his contentions, rendered by this Court in S.B. Civil First Appeal No.254/1998 on 29.04.2002.

Per contra, learned counsel for the State vehemently argued that there is no ground to interfere in the finding of the trial Court that the suit was filed after three years which is barred by limitation. It is contended on behalf of the State that the defendant department informed the plaintiff-appellant vide communication dated 30.03.1978 and the trial Court has rightly held that last adjustment in the matter was made vide this communication and thereafter there is no acknowledgment made by the defendant department, therefore, the suit must have been filed within three years of this date. It is contended on behalf of the respondents that the plaintiff is not entitled to any relief in a time-barred claim.

I have given my thoughtful consideration to the rival submissions and also carefully gone through the evidence on record.
In my considered opinion, the trial Court fell in error while placing reliance upon the communication Ex.-33 for the purpose of reckoning the period of limitation. It is true that accrual of the cause of action is the determining factor while deciding a question of limitation but such cause of action cannot be pinpointed over a single event detaching it from the complete whole. For the purpose of ascertaining the grouse of the plaintiff, of course, Ex.-33 dated 30.03.1978 shot up the controversy but, thereafter, the plaintiff represented before the defendant department and, ultimately, sent notice under Section 80, C.P.C. The communication dated 12.08.1980, Ex.-36 is testimony of

the pendency of the decision on the matter with the department and, therefore, by no stretch of imagination it can be inferred from the evidence that the last adjustment was made by the defendant department vide communication dated 30.03.1978 and suit should have been filed within three years from this date. The finding of the trial Court is ex facie perverse. The cause of action for determining limitation to bring in suit is, in fact, the event which lays bare failure of a party to redress the grievance being brought up before the Court by way of filing suit. The plaintiff's case is borne out by evidence on record that inspite of communication dated 12.08.1980 neither any payment was made to it nor its claim was decided on merit.

Besides the above, the trial Court decided the issues in the suit, except issue No.6 with regard to limitation, in favour of the plaintiff and thereby genuineness of the claim of the plaintiff has been adjudged in its favour. It is indeed pity that genuine claim is frustrated merely on technical ground of limitation whereas there is nothing on record even otherwise to presume that delayed claim has in any manner left the defendants prejudiced in resisting the suit. I am fortified in my opinion by the observation of the Hon'ble Supreme Court in the judgment rendered in the case of Madras Port Trust Vs. Hymanshu International, reported in AIR 1979 SC 1144, wherein their Lordships of the Supreme Court held as follows :

> “We do not think that this is a fit case where we should proceed to determine whether the claim of the respondent was barred by S.110 of the Madras Port Trust Act (II of 1905). The plea of limitation based on this section is one which the court always looks upon with disfavour and it is unfortunate tha a public authority like the Port Trust should, in all morality and justice, take up such a plea to defeat a just claim of the citizen. It is high time that governments and public

> authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well-founded, it has to be upheld by the Court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable. Here, it is obvious that the claim of the respondent was a just claim supported as it was by the recommendation of the Assistant Collector of Customs and hence in the exercise of our discretion under Art.136 of the Constitution, we do not see any reason why we should proceed to hear this appeal and adjudicate upon the plea of the appellant based on S.110 of the Madras Port Trust Act (II of 1905)."

As a result of the foregoing discussion, this appeal succeeds and is hereby allowed. While upholding the findings arrived at by the trial Court on issues No.1, 2, 3, 4, and 5, the finding arrived at by the trial Court on issue No.6 is quashed and set aside. In view of the opinion expressed hereinabove, the suit of the appellant-plaintiff filed within three years from 12.08.1980, the date of communication Ex.-36, is held to be within limitation and, accordingly, issue No.6 is decided against the respondent-defendants and in favour of the appellant-plaintiff. Consequently, the suit of the appellant-plaintiff is ordered to be decreed in its favour with cost. The appellant-plaintiff is entitled for payment of Rs.12,615/- alongwith interest at the rate of 9% per annum from the date of filing suit till realization.

(Gopal Krishan Vyas) J.